

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

THE POLICE AND FIRE RETIREMENT
SYSTEM OF THE CITY OF DETROIT,
Individually and On Behalf of All Others
Similarly Situated,

Plaintiff,

v.

ROSEMARY A. CRANE, PATRICK D.
SPANGLER, PATRICK S. JONES, PETER
C. BRANDT, PHILIPPE O. CHAMBON,
DARREN W. COHEN, THOMAS L.
HARRISON, GILBERT H. KLIMAN,
JOHN E. VORIS, MARK A. WAN,
JACOB J. WINEBAUM, J.P. MORGAN
SECURITIES LLC, PIPER JAFFRAY &
CO., WILLIAM BLAIR & COMPANY,
LLC., JMP SECURITIES LLC, and
EPOCRATES, INC.,

Defendants.

Case No. 5:13-cv-00945-LHK

**ORDER APPOINTING POLICE AND
FIRE RETIREMENT SYSTEM OF THE
CITY OF DETROIT AS LEAD
PLAINTIFF AND APPROVING ITS
SELECTION OF LEAD COUNSEL;
ORDER VACATING OCTOBER 31,
2013 HEARING**

**ORDER APPOINTING THE CITY OF DETROIT AS LEAD PLAINTIFF AND APPROVING
ITS SELECTION OF LEAD COUNSEL; ORDER VACATING OCTOBER 31, 2013 HEARING**

1 WHEREAS, plaintiff and putative class member the Police and Fire Retirement System of
 2 the City of Detroit (“City of Detroit”) has moved, pursuant to Section 21D of the Securities
 3 Exchange Act of 1934, 15 U.S.C. §78u-4(a)(3)(B), and Section 27 of the Securities Act of 1933, 15
 4 U.S.C. §77z-1(a)(3)(B), as amended by the Private Securities Litigation Reform Act of 1995, for
 5 appointment as lead plaintiff and for approval of its selection of Scott+Scott, Attorneys at Law, LLP
 6 (“Scott+Scott”) and Glancy Binkow & Goldberg LLP (“Glancy Binkow”) as lead counsel for
 7 plaintiffs and the Class, and good cause appearing therefore:

8 IT IS HEREBY ORDERED as follows:

9 1. The October 31, 2013 hearing on the City of Detroit’s Motion for Appointment as
 10 Lead Plaintiff is VACATED because the Court finds that, pursuant to Civil Local Rule 7-1(b), this
 11 matter is appropriate for determination without oral argument.

12 2. The Court finds that the City of Detroit is the most adequate Lead Plaintiff to
 13 represent the Class in the above-captioned action. No other entity has filed a motion for appointment
 14 as lead plaintiff. Moreover, there have been no objections to the City of Detroit’s being appointed as
 15 Lead Plaintiff.

16 3. Furthermore, the Court finds that appointing the City of Detroit as Lead Plaintiff is
 17 supported by the following facts: (1) the City of Detroit “filed [the] Complaint” in this action; (2) the
 18 City of Detroit has “the largest financial interest in the relief sought by the class,” *see* Declaration of
 19 Hal D. Cunningham (“Cunningham Decl.”), ECF No. 19, Ex. B; and (3) the City of Detroit
 20 “otherwise satisfies the requirements of Rule 23.” 15 U.S.C.A. § 78u-4(a)(3)(B)(iii)(I). In
 21 determining whether a plaintiff satisfies the requirements of Rule 23 for the purposes of being
 22 appointed lead counsel, the Court is particularly concerned with the requirements of typicality and
 23 adequacy. *See In re Cavanaugh*, 306 F.3d 726, 730 (9th Cir. 2002) (holding that lead plaintiff must
 24 “satisf[y] the requirements of Rule 23(a), in particular those of ‘typicality’ and ‘adequacy’”). Here,
 25 the City of Detroit has made a sufficient showing that it satisfies the typicality requirement because
 26 the City of Detroit, like other members of the purported class, purchased Epocrates common stock
 27 during the Class Period, allegedly in reliance upon Defendants’ purported false and misleading

1 statements, and allegedly suffered damages as a result. Mot. at 7; *see also City of Dearborn Heights*
 2 *Act 345 Police & Fire Ret. Sys. v. Align Tech., Inc.*, 12-CV-06039-LHK, 2013 WL 2368059, at *4
 3 (N.D. Cal. May 29, 2013) (holding that typicality requirement was satisfied for the purposes of
 4 appointing lead counsel where the plaintiff demonstrated that “like all other members of the
 5 purported class, the [plaintiff] purchased Align common stock during the Class Period, allegedly in
 6 reliance upon Defendants’ purported false and misleading statements, and allegedly suffered
 7 damages as a result”). The City of Detroit has also made a sufficient showing that it satisfies the
 8 adequacy requirement because the City of Detroit does not appear to “have any conflicts of interest
 9 with other class members” and has demonstrated its willingness to “prosecute the action vigorously
 10 on behalf of the class” by filing the first Complaint in this matter. *See City of Dearborn Heights*,
 11 2013 WL 2368059 at *4 (quoting *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003)).
 12 Accordingly, the Court finds that, for the purposes of appointing the City of Detroit as Lead Plaintiff,
 13 Rule 23’s requirements are met. The Court therefore appoints the City of Detroit as Lead Plaintiff.

14 4. Lead Plaintiff has selected Scott+Scott and Glancy Binkow to serve as Lead Counsel.
 15 No objection has been filed, and no other counsel have filed a motion for appointment as lead
 16 counsel. Both Scott+Scott and Glancy Binkow have extensive experience litigating these types of
 17 securities matters and appear to be able to adequately represent the class. *See Cunningham Decl.*,
 18 Exs. C and D. The Court therefore approves Lead Plaintiff’s selection of Scott+Scott and Glancy
 19 Binkow as Lead Counsel. *See City of Dearborn Heights*, 2013 WL 2368059, at *4 (“The decision of
 20 lead counsel belongs to the lead plaintiff.”) (citing *Staton*, 327 F.3d at 957).

21 5. Lead Counsel shall have the authority to speak for all plaintiffs and class members in
 22 all matters regarding the litigation, including, but not limited to, pre-trial proceedings, motion
 23 practice, trial and settlement, and shall make all work assignments in such a manner as to facilitate
 24 the orderly and efficient prosecution of this litigation and to avoid duplicative or unproductive effort.
 25 Additionally, Lead Counsel shall have the following responsibilities:

26 (a) to brief and argue motions;

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- (b) to initiate and conduct discovery, including, without limitation, coordination of discovery with defendants' counsel, the preparation of written interrogatories, requests for admission, and requests for production of documents;
- (c) to direct and coordinate the examination of witnesses in depositions;
- (d) to act as spokesperson at pretrial conferences;
- (e) to call and chair meetings of plaintiffs' counsel as appropriate or necessary from time to time;
- (f) to initiate and conduct any settlement negotiations with counsel for defendants;
- (g) to provide general coordination of the activities of plaintiffs' counsel and to delegate work responsibilities to selected counsel as may be required in such a manner as to lead to the orderly and efficient prosecution of this litigation and to avoid duplication or unproductive effort;
- (h) to consult with and employ experts;
- (i) to receive and review periodic time reports of all attorneys on behalf of plaintiffs, to determine if the time is being spent appropriately and for the benefit of plaintiffs, and to determine and distribute plaintiffs' attorneys' fees; and
- (j) to perform such other duties as may be expressly authorized by further order of this Court.

20 6. Lead Counsel shall be responsible for coordinating all activities and appearances on
21 behalf of the Class and for disseminating notices and orders of this Court.

22 7. No motion, application, or request for discovery shall be served or filed, or other
23 pretrial proceedings initiated, on behalf of Lead Plaintiff, except through Lead Counsel.

24 8. All notices, proposed orders, pleadings, motions, discovery, and memoranda
25 requiring a response in less than 30 days shall be served upon Lead Counsel and defense counsel by
26 the Court’s Electronic Case Filing (“ECF”) system, overnight mail service, telecopy, and/or hand
27 delivery.

1 9. All other service shall take place by regular mail.

2 10. Lead Counsel for the Class shall be available and responsible for communications to
3 and from the Court.

4 11. Defendants' counsel may rely upon all agreements made with Lead Counsel, or other
5 duly authorized representatives of Lead Plaintiff.

6 12. This Order shall apply to each case subsequently filed in this Court or transferred to
7 this Court, unless a party objecting to the consolidation of such case or to any other provision of this
8 Order files within ten (10) days after the date upon which a copy of this Order is mailed to counsel
9 for such party, an application for relief from this Order or any provision herein and this Court deems
10 it appropriate to grant such application.

11 IT IS SO ORDERED.

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13 DATED:August 9, 2013
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HONORABLE LUCY H. KOH
UNITED STATES DISTRICT JUDGE

15 Submitted by:

16 /s Hal D. Cunningham
17 Hal D. Cunningham
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